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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re the MARRIAGE of
CHARLOTTE and MARK ANTEN.

B283283

(Los Angeles County
Super. Ct. No. BD655587)

CHARLOTTE ANTEN,

Respondent,

v.

MARK ANTEN,

Appellant.

APPEAL from an order of the Superior Court of
Los Angeles County, Christine Byrd, Judge. Affirmed.

David D. Diamond for Appellant.

Law Offices of Robert L. Schibel and Robert L. Schibel for
Respondent.

Mark Anten (Mark) appeals from the superior court order granting a restraining order pursuant to the Domestic Violence Prevention Act (DVPA, Fam. Code, § 6320¹) that names Mark as the restrained party and protects Mark's wife Charlotte Anten (Charlotte) and the couple's twin sons, William and Gregory. Mark does not challenge the restraining order's inclusion of William, but contends Gregory and Charlotte should not have been included as protected parties. Finding no abuse of discretion, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On March 9, 2017, Charlotte filed a request for a restraining order protecting her and nine-year-old twins William and Gregory. In addition to requesting an order prohibiting Mark from having any contact with her or the children, she sought a move-out order as well as a custody order awarding her sole legal and physical custody of the twins.

Charlotte submitted a declaration in support of her request for a restraining order and testified at the April 5, 2017 hearing. Mark submitted a written response to the request for a restraining order and also testified.

A. Evidence from Charlotte

Charlotte testified Mark had been abusing drugs for the past 10 years, including cocaine, which he admitted to using and which she found in one of his suit jackets and in one of their son's backpack. Mark also used prescription amphetamines, Xanax,

¹ Undesignated references to code provisions are to the Family Code.

Vicodin, sleeping pills and marijuana. Approximately two years earlier, Mark had begun exhibiting agitated and paranoid behaviors and was not sleeping at night. Although he had admitted to having a drug problem, Mark refused to go to drug rehabilitation, even after two family interventions. Mark's behavior had become more erratic in recent months, and Charlotte believed his ability to drive was impaired, as evidenced by two incidents where he side swiped Charlotte's car in the driveway and another where he hit the mailbox.

Charlotte reported that on February 12, 2017 Mark "violently slapped" William on his bare shoulder, leaving a "deep red hand print." Charlotte attached a photograph of the injury to her declaration. Gregory was sitting at the same table as William at the time.

Charlotte also described Mark as having become inappropriate and overly dark in his interactions with their young children. He told the boys that "the reason someone has a closed casket is because they are in the mafia and they were shot in their face and their body was in pieces so you would not want to look at them." Charlotte reported an incident that occurred when Gregory stayed home sick from school on February 22, 2017. Mark stayed home with Gregory until 11:30 a.m. when Charlotte came home from work. When she arrived at home, Gregory appeared to be "terribly sad and frightened." He repeatedly asked Charlotte, and later other family members, to check his tongue and eyes to see if they were bleeding. He told Charlotte, "Daddy told me I may have Ebola. Daddy showed me a YouTube video of what Ebola is." Gregory thought he was going to die from the Ebola virus. When Charlotte asked Mark why he told Gregory he had Ebola, Mark said he was just teasing.

That evening, Mark kept asking Gregory, “How is your Ebola?” despite Gregory’s obvious distress and repeated requests for him to stop. The next day, Mark scolded Gregory for telling Charlotte what Mark had said to him about Ebola.

Charlotte denied Mark had ever been physically abusive towards her but stated he had become emotionally and psychologically abusive. On February 5, 2017, while the children were nearby, he approached her, noticeably upset. He told her he did not want her using his last name anymore and badgered her repeatedly to say when she was going to change her name and what the process was for doing so. He told her he would wake her up every two hours that night until she told him the process; and, indeed, he woke her up throughout the night, repeating the question. He also threatened to have her arrested and have the children taken away from her. Mark told Charlotte he knew some “shady doctors” who would say she was crazy so that he could place her in a “5150 hold.”²

Charlotte testified Mark had begun waking her up in the middle of the night at least once a week when he was on “some sort of tirade.” He would shine his cell phone flashlight on her face, and she would wake up, startled. These episodes were very disturbing for Charlotte. Afterwards she would lie awake shaking and scared and be unable to fall asleep. She was suffering from sleep deprivation.

On approximately January 25, 2017, Mark woke Charlotte up with his flashlight in her face and ordered her to give him her

² Welfare and Institutions Code section 5150 permits persons to be involuntarily detained in a psychiatric hospital for up to 72 hours if they are a danger to themselves or others or are gravely disabled.

cell phone so that he could check all her messages. When she refused, he said he was going to crush her phone. At approximately 2:30 a.m., he woke her up again in the same way. He asked her if she had called the police and told her that “if the police come knocking on this door, the only person the police will be taking is you.” Charlotte lay awake most of the rest of the night worried he had called the police and that he would create a story to have her taken away from the children.

Charlotte testified that, for two days in a row at the end of January 2017, Mark called her repeatedly while she was at work, where she sits in a cubicle and is not supposed to take personal calls. Charlotte was very embarrassed in front of her colleagues. Mark later admitted he was doing this only to embarrass her and said he would continue to call her at work whenever he wanted. He told her that to harass her he was going to show up at her workplace. He also went on her company’s website to look up coworkers’ names and threatened to call them. Given his recent erratic behavior, Charlotte believed he would follow through. She had become “extremely anxious” since Mark began making threats to come to her work.

B. Evidence from Mark

With respect to his alleged drug problem, Mark admitted having a valid medical marijuana card for back pain and anxiety, but said he had used marijuana only once in the previous two years. He stated he had valid prescriptions for and took amphetamines, Vicodin, Xanax and sleeping pills. Sometimes when very anxious he would take two or three Xanax. In his declaration he explained that he used a sinus medication physically resembling cocaine, insinuating that the white powder

Charlotte found on several occasions was not actually cocaine. At the hearing, however, he testified that he had used cocaine at friends' homes within the previous eight months.

He denied ever physically abusing either of his children or causing them pain. As for the alleged slapping incident involving William, Mark admitted he "touched" him but denied leaving a handprint. With respect to the discussion he had with Gregory regarding Ebola, he stated that he merely explained the difference between pneumonia and Ebola, because Gregory was mixing up the words, and he showed Gregory information about Ebola on the Internet to answer his questions.

Mark stated he used the light on his cell phone at night because it was so dark in the house. He admitted that he woke Charlotte up to discuss "important stuff in our lives a couple of times," but insisted she had also woken him up on numerous occasions. He also stated that on one occasion he woke her up after calling the police because he was concerned and paranoid that a crime had occurred at their elderly neighbors' home after he found their car door open at night. He denied threatening to have Charlotte placed in a "5150 hold," contending he did not know what that meant.

In ruling on the request for a restraining order, the court found Charlotte to be a credible witness who "testified with genuineness . . . that she has a reasonable fear as defined under the [DVPA]." The court found Mark was not a credible witness; although he had not attempted to mislead the court, his perspective was distorted, and he failed to understand how others could view his conduct as harassing or engendering fear.

The court found that Mark hit William in an "unprovoked assault." Further, Mark's suggestion to Gregory that he might

have Ebola “intentionally placed the minor child in reasonable apprehension of imminent or serious bodily injury to himself in that he believed he could have Ebola” and “disturbed the peace of the child.” In so doing, the court found Mark also placed Charlotte in fear for her child and disturbed her peace.

The court also found Mark harassed Charlotte by waking her up in the night and “demand[ing] communication in a harassing manner and on harassing subject matters” and that he also harassed her at her workplace with annoying phone calls. Further, he threatened to destroy her personal property and “acted in a threatening manner . . . that . . . has disturbed her peace and tranquility.” The court observed that Mark “was jumpy and agitated” in the court proceedings and exhibited “dramatic facial expressions,” further supporting its finding that his conduct disturbed the peace of Charlotte and the children.

The court granted a two-year restraining order protecting Charlotte and the two children, but permitted Mark to have regular supervised visitation with the children.³

Mark timely appealed.

³ Although the restraining order was set to expire April 5, 2019, we have taken judicial notice of the trial court’s June 4, 2019 order reissuing the restraining order. Because the restraining order has been renewed, the appeal is not moot. A determination that insufficient evidence supports the trial court’s issuance of the original restraining order as to Charlotte and Gregory could provide Mark with effective relief, as “[s]uch a finding could undermine the basis for the renewal of the restraining order.” (*Harris v. Stampolis* (2016) 248 Cal.App.4th 484, 495.)

DISCUSSION

A. *Standard of Review*

“Generally, a trial court has broad discretion in determining whether to grant a petition for a restraining order” under the DVPA. (*In re Marriage of Fregoso & Hernandez* (2016) 5 Cal.App.5th 698, 702.) We review an order granting a restraining order for abuse of discretion. (*In re Marriage of Davila & Mejia* (2018) 29 Cal.App.5th 220, 226.) ““All exercises of discretion must be guided by applicable legal principles, however, which are derived from the statute under which discretion is conferred.”” (*Perez v. Torres-Hernandez* (2016) 1 Cal.App.5th 389, 396.) Whether a trial court applied the correct legal standard to an issue in exercising its discretion is a question of law requiring de novo review. (*Id.* at p. 397.)

We review the trial court’s factual findings for substantial evidence. (*In re Marriage of Davila & Mejia, supra*, 29 Cal.App.4th at p. 226.) In applying the substantial evidence standard, “[w]e do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or weigh the evidence. Instead, we draw all reasonable inferences in support of the findings, view the record in favor of the [trial] court’s order and affirm the order even if other evidence supports a contrary finding.” (*In re T.W.* (2013) 214 Cal.App.4th 1154, 1161-1162.)

B. *The Trial Court Did Not Abuse Its Discretion in Issuing the Restraining Order Protecting Charlotte*

Mark contends his conduct vis-à-vis Charlotte did not rise to the level of domestic violence that may be enjoined by a restraining order pursuant to the DVPA. We disagree.

“The DVPA defines domestic violence, as relevant here, as abuse perpetrated against a spouse or the child of a party. (§ 6211, subds. (a) & (e).)” (*In re Marriage of Davila & Mejia*, *supra*, 29 Cal.App.5th at p. 226.) Section 6203, subdivision (a), defines “abuse” for purposes of the DVPA as conduct described by any of the following four categories: “(1) To intentionally or recklessly cause or attempt to cause bodily injury[;] [¶] (2) Sexual assault[;] [¶] (3) To place a person in reasonable apprehension of imminent serious bodily injury to that person or to another[; or] [¶] (4) To engage in any behavior that has been or could be enjoined pursuant to Section 6320.” Section 6320, subdivision (a), provides in part that “[t]he court may issue an ex parte order enjoining a party from . . . stalking . . . threatening . . . harassing . . . making annoying telephone calls . . . or disturbing the peace of the other party, and, in the discretion of the court, on a showing of good cause, of other named family or household members.” “Disturbing the peace” for purposes of section 6320 means “conduct that destroys the mental or emotional calm of the other party.” (*In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1497; accord, *N.T. v. H.T.* (2019) 34 Cal.App.5th 595, 602-603; *Burquet v. Brumbaugh* (2014) 223 Cal.App.4th 1140, 1146.) “As a result, abuse under the DVPA includes physical abuse or injury, as well as acts that ‘destroy[] the mental or emotional calm of the other party.’” (*Rodriguez v. Menjivar* (2015) 243 Cal.App.4th 816, 820; see *Phillips v. Campbell* (2016) 2 Cal.App.5th 844, 852.)

A restraining order to prevent domestic violence may issue if evidence is provided showing “reasonable proof of a past act or acts of abuse.” (§ 6300.) Courts have construed this provision as imposing a preponderance of the evidence standard of proof for

the issuance of restraining orders. (*Gdowski v. Gdowski* (2009) 175 Cal.App.4th 128, 137; see *In re Marriage of Davila & Mejia*, *supra*, 29 Cal.App.5th at p. 226 [“The DVPA requires a showing of past abuse by a preponderance of the evidence”].)

Mark contends that Charlotte failed to show reasonable proof of any past acts of abuse by Mark. He further argues Mark’s past behaviors identified by Charlotte did not “rise to the level of destroying her emotional calm as required by case law,” and thus the court abused its discretion in issuing a restraining order. On appeal, we review whether substantial evidence supported the court’s findings that Mark engaged in particular conduct. (See *In re Marriage of Fregoso & Hernandez*, *supra*, 5 Cal.App.5th at p. 703.) We review for abuse of discretion the court’s finding that Mark’s conduct amounted to disturbing Charlotte’s peace.

The trial court explicitly found Charlotte credible and Mark not credible. We do not disturb the trial court’s credibility findings. (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.) Thus, we credit Charlotte’s testimony about Mark’s harassing and abusive behavior. Specifically, she testified that Mark had begun waking her up multiple times in the middle of the night by shining a flashlight in her face, to then badger her with questions and go on “tirades.” During one of these rants in the early morning hours, he threatened to crush her phone when she would not give it to him so he could check her text messages. He also threatened to have her arrested and placed in a “5150 hold” and to have the children taken away from her.

Mark also made harassing phone calls to Charlotte while she was at work, despite knowing she was not permitted to take personal telephone calls there. He told her he would continue to

harass her at work by calling her and her coworkers and stated he was going to show up at her place of employment. Given Mark's increasingly erratic and abusive behavior, Charlotte believed he would follow through on these threats.

Mark's erratic behavior and harassment were very disturbing to Charlotte and had caused her to become extremely anxious. When he would wake her up in the night, she would be so rattled that she would shake and could not get back to sleep. She testified she was suffering from sleep deprivation.

Substantial evidence supports the court's finding that Mark engaged in past acts of abuse. And the trial court did not abuse its discretion in determining this behavior by Mark disturbed Charlotte's "peace and tranquility." (See *Burquet v. Brumbaugh*, *supra*, 223 Cal.App.4th at p. 1144 [defendant disturbed plaintiff's peace by his "course of conduct of contacting plaintiff by phone, e-mail, and text," and arriving at her residence uninvited and refusing to leave]; *In re Marriage of Nadkarni*, *supra*, 173 Cal.App.4th at pp. 1497-1499 [husband destroyed wife's emotional calm when he surreptitiously accessed and disclosed her confidential information causing her "to suffer 'shock' and 'embarrassment,' to fear the destruction of her 'business relationships,' and to fear for her safety"]; *Rodriguez v. Menjivar*, *supra*, 243 Cal.App.4th at p. 822 ["significant acts of emotional abuse," including "acts of isolation, control, and threats" were sufficient to demonstrate the destruction of Rodriguez's mental and emotional calm]; *In re Marriage of Evilsizor & Sweeney* (2015) 237 Cal.App.4th 1416, 1420-1421, 1426 [husband disturbed wife's peace when he disclosed her private text communications, hacked into her social media account and threatened to reveal additional private information about her,

causing her to suffer sleepless nights, shock and embarrassment].)

In addition, the court's finding that Mark committed an "unprovoked assault" on William supported the issuance of the restraining order not only to protect William but also to include Charlotte. "Under the DVPA, abuse is not limited to the protected party seeking the order. The definition of abuse includes placing 'a person in reasonable apprehension of imminent serious bodily injury to that person or *to another*.' (§ 6203, subd. (a)(3), italics added.)" (*Perez v. Torres-Hernandez, supra*, 1 Cal.App.5th at pp. 400-401 [reversing order denying mother's request to renew restraining order against the father where his "abuse of their children destroyed [mother's] emotional calm and made her fear for her safety and the safety of her children"].) A parent's physical abuse of a child may not only place the other parent in reasonable apprehension of serious bodily injury to himself or herself as well as the child, but also disturb the parent's peace. (*Gou v. Xiao* (2014) 228 Cal.App.4th 812, 818 [allegations of father's abuse of child would support finding that father "had placed [child's mother] in reasonable apprehension of imminent serious bodily injury to herself or the child, and disturbed [mother's] peace by causing the destruction of her mental or emotional calm"]; see *In re Marriage of Fregoso & Hernandez, supra*, 5 Cal.App.5th at p. 703 [evidence that father physically abused his child supported issuance of domestic violence restraining order protecting child's mother].) Thus, Mark's violence directed at William also disturbed Charlotte's emotional calm and reasonably engendered fear of further physical violence.

Nor do we find the trial court erred in determining Mark disturbed Charlotte's peace by incessantly teasing Gregory that he had Ebola, despite Gregory's fearful reaction and intense worry that he had the disease. Mark continued to tease Gregory after knowing the reaction it elicited and being asked to stop multiple times. As Gregory's mother, Charlotte reasonably was disturbed by Mark's conduct and its detrimental effect on her child.

For the reasons above, we find no abuse of discretion in the court's decision to include Charlotte as a protected person in the restraining order.

C. The Trial Court Did Not Abuse Its Discretion by Including Gregory as a Protected Person

Mark does not contest the inclusion of William in the restraining order based on the slapping incident, but he contends the court erred in extending the restraining order to cover Gregory as well. The trial court concluded that Mark placed Gregory in reasonable apprehension of imminent serious bodily injury and disturbed the peace of the child by leading Gregory to believe he might have Ebola. On appeal, Mark does not argue that his behavior did not have these effects on Gregory. Rather, Mark contends that "[t]easing a nine year old that he may have Ebola is not *intentionally* placing the child in reasonable apprehension or [*sic*] imminent or serious bodily injury." He argues without support that Charlotte was required to show that Mark either "intentionally" or "recklessly" placed Gregory in fear of serious bodily harm.

Intentional or reckless conduct is a requirement for the first type of abuse under section 6203, "[t]o intentionally or

recklessly cause or attempt to cause bodily injury.” (§ 6203, subd. (a)(1).) It is not a requirement for the third type of abuse, “[t]o place a person in reasonable apprehension of imminent serious bodily injury to that person or to another,” or the fourth category, “[t]o engage in any behavior that has been or could be enjoined pursuant to Section 6320.” (*Id.*, subds. (a)(3), (a)(4).) Nor does section 6320 include any requirement that it be shown the party to be restrained acted intentionally or recklessly. Even if there were such a requirement, we would find Mark’s behavior to be reckless, given the evidence that he continued tormenting Gregory by asking him, “How is your Ebola?” well after it was clear that Gregory was genuinely still scared that he had Ebola.

Mark has failed to demonstrate that the trial court abused its discretion in including Gregory as a protected party in the restraining order.

DISPOSITION

The order granting the restraining order is affirmed.
Charlotte shall recover her costs on appeal.

STONE, J.*

We concur:

PERLUSS, P.J.

SEGAL, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.